

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Public Notice of Informal Hearing (Request for Comments)
Concerning the 2012 Electric Procurement Events
Which Were Held On Behalf of
Commonwealth Edison Company and Ameren Illinois Company

REPLY COMMENTS ON BEHALF OF THE ILLINOIS POWER AGENCY

On May 17, 2012, the Illinois Commerce Commission (“Commission”) issued its request for comments on the recently completed Rate Stability and Spring 2012 procurement events conducted by the Illinois Power Agency (“IPA”) on behalf of Commonwealth Edison (“ComEd”) and Ameren Illinois Company (“Ameren”). Initial comments were due on June 14, 2012, with opportunities for reply by June 28, 2012. Five parties submitted initial comments: the Office of the Illinois Attorney General (“AG”), Boston Pacific Company (the Commission’s Procurement Monitor), Exelon Generating Company,¹ NERA Economic Consulting (one of the IPA’s Procurement Administrators), and the Staff of the Illinois Commerce Commission (“Staff”). All of these parties have been involved in the electricity procurement processes overseen by the Commission since the enactment of the Illinois Power Agency Act. The IPA appreciates each of the parties’ participation in this comment process and provides responses to each of the comments below.

The IPA wishes to highlight a few overarching points before responding to the individual commenters. As a fundamental starting point, the parties filing initial comments and the IPA all share the goal of minimizing the costs of conducting these procurement events and ensuring robust and competitive results that will benefit consumers who ultimately bear the costs. This goal is embodied in the IPA’s statutory mandate, and the IPA appreciates suggestions and

¹ Although captioned as the comments of Exelon Generation, LLC, also incorporates perspectives from Constellation Energy Commodities Group and Constellation NewEnergy.

recommendations from all sources in anticipation of filing the next procurement plan for Commission approval. (*See, e.g.*, 20 ILCS 3855/1-5(A) and (G), 1-75 (requiring price benchmarks).)

DISCUSSION

I. Response to the Office of the Illinois Attorney General

The AG provided comments with respect to three areas of concern under the overarching theme of satisfaction with results (with the exception of Ameren capacity results), but questions as to whether certain factors were leading to insufficiently competitive behavior by bidders. As discussed below, the IPA believes that evidence relied on by the AG does not necessarily indicate that the procurements were insufficiently competitive.

First, while acknowledging that the winning bids in both the ComEd and Ameren energy procurements closely tracked NYMEX wholesale electricity market prices for the relevant delivery periods, the Attorney General expresses some concern that there was a limited number of successful suppliers in the Ameren energy procurement, and whether price benchmarks were appropriately set and protected. The AG requests that the Procurement Administrator for the Ameren process (Levitan) address these concerns.

The IPA appreciates the concern that the process maintains its integrity and looks forward to the Levitan response, but simultaneously highlights the comments of Boston Pacific Company, the Procurement Monitor who had access to confidential information regarding the bids, that conclude that a competitive procurement occurred. Specifically, Boston Pacific Company “found no evidence of collusive or otherwise anti-competitive behavior”, and further found that “these RFPs were run by the procurement administrators in compliance with all Commission-approved rules.” (Boston Pacific Initial Comments at 6, 7.) In addition, although Boston Pacific did not comment on the number of bidders, the IPA notes that a large number of

bidders participated in the overall procurements process, but the quantities to be procured were significantly reduced due to the combined effect of prior purchases and significantly lower load forecasts due to municipal aggregation. (*See, e.g.*, Boston Pacific Initial Comments at 9-10 (explaining impact of shifts in load and previous procurements).) It is not surprising that a relatively small number of bidders were successful under these circumstances, where the “tyranny of small numbers” (*i.e.* very few opportunities to win led to very few winners) outweighs other impacts. Conversely, if the volumes to be procured were higher, one might reasonably expect a higher number of winning bidders, which would be consistent with Boston Pacific’s finding that “high number of return bidders is a sign that the process is viewed by bidders as being fair and transparent.” (Boston Pacific Initial Comments at 7.)

Second, with respect to renewable energy certificate (“REC”) procurement, while the AG again applauds the drop in REC prices, which it attributes to a current surplus in REC supply, it also expresses concern with the relatively small number of winning REC suppliers. Again, the AG requests that the Procurement Administrators address this concern, and the IPA looks forward to their response. However, the Commission’s own Procurement Monitor points out that there were 13 winners for the Rate Stability REC RFP’s and 10 winners for the Spring 2012 REC RFPs. (*See* Boston Pacific Initial Comments at 7.) The IPA notes that, as with the energy procurement, there was very little REC product to buy given prior procurements and significantly lower load forecasts. (*See id.* at 9-10 (explaining decreases in energy forecasts, which lead to similar decreases in required RECs).) For the same reasons as described above, one would expect fewer winners in these circumstances.

Third, the AG calls into question the results of the Ameren Capacity RFP, noting that not all the required quantity was able to be purchased for July 2012, and the prices for the quantity purchased exceed the prices in the MISO Voluntary Capacity Auction (“VCA”) for July 2012, as

reported on May 26, 2012. The IPA respectfully notes that, in order to be a successful bid, prices must necessarily be less than the confidential benchmarks approved by the Commission; and that the VCA is but one channel for the purchase and sale of capacity and represents a spot market for voluntary bilateral transactions at a particular point in time. Furthermore, Boston Pacific, once again, detected no market failure issues with the Ameren capacity RFP, and reported 9 winners overall. (*See* Boston Pacific Initial Comments at 6-7.) Nevertheless, the IPA welcomes any additional insight that may be offered by the Procurement Administrators, and notes there may be any number of reasons for less than desired capacity and higher than desired prices, including the fact that July 2012 is a near month, represents the typical summer peak month, and those with still uncommitted capacity may be holding it back as a volume and weather risk hedge.

II. Response to Boston Pacific Company

As a threshold matter, the IPA welcomes the determination by Boston Pacific— an independent monitor of the procurement process hired by the Commission (*see* 220 ILCS 5/16-111.5(c)(2)) and not affiliated with the IPA – that the procurement processes were run successfully, fairly and in compliance with all rules applicable to them. In addition to these findings, however, Boston Pacific provides several useful comments and suggestions that the IPA discusses below.

The first recommendation from Boston Pacific suggests that the IPA clarify in its next Procurement Plan whether the quantity of RECs to be purchased on behalf of a utility should be increased so that the Alternate Compliance Payments (ACP) by hourly customers are properly utilized. As it stands now, while these ACP payments by hourly customers are used to increase the budgeted spending cap for RECs, they have not been spent if the otherwise necessary quantity of RECs is purchased without exceeding the budget cap. If these amounts are not to be spent, regardless of the otherwise calculated quantity targets, a question is raised as to whether

unspent amounts collected from hourly customers should be refunded to customers, and if so, to which customers. The IPA recognizes this as a legitimate concern and will address it directly in its 2013 Procurement Plan submitted to the Commission for approval later this summer. The IPA will carefully formulate a recommendation and looks forward to the dialogue from parties which will take place in that proceeding.

Boston Pacific next points out the dramatic impacts that increased customer switching had on the 2012 procurements, and the implications for the 2013 Procurement Plan and beyond. Without repeating their discussion on the impacts of risks to ratepayers, and the ways those risks may be mitigated, the IPA concurs with this assessment of risks and potential mitigation strategies. This will be a key discussion in the 2013 Procurement Plan, and the IPA looks forward to the comments of all interested parties before and during the Commission approval process on this issue.

A third recommendation is with respect to bidder credit requirements: Boston Pacific recommends a further harmonization of the ComEd and Ameren pre-bid letters of credit so that there will be, in fact, a single pre-bid letter of credit form. This will greatly simplify the process for bidders that participate in both the ComEd and Ameren RFP's. The IPA concurs with NERA that this be taken one step further, so that a common pre-bid letter of credit is executed between the bidders and the IPA rather than the individual utilities, as described further in the NERA section below. The IPA supports the suggestion by Boston Pacific that Ameren adopt the ComEd forms of the post-bid letters of credit.

The final set of comments from Boston Pacific consists of suggestions with respect to the design of the Distributed Renewable Energy Generation program required to be included in the 2013 Procurement Plan. The IPA values the design considerations and questions to be answered as articulated by Boston Pacific and will include their insight along with that of the other

stakeholders who participated in the IPA's Distributed Generation Workshops when preparing the proposed Distributed Generation program for 2013.

III. Response to Exelon Generating Company and Related Entities

The comments of Exelon Generating Company and its related entities (collectively "ExGen") focus on the potential improvements in the procurement calendar, specifically:

- Hold procurements earlier in the week;
- Notify potential winning bidders the same day; and
- Hold REC procurement events earlier.

With regard to the timing of procurements, ExGen expounds on why Monday or Tuesday are preferable days on which to hold a procurement event. The IPA does not disagree with the argument. However, there is a statutorily mandated sequence of events that must take place within a specific time constraint as spelled out in the law. Procurement events have been scheduled so that the Commission meeting date at which it may approve the procurement event results in the time constraints being met. The 2012 Rate Stability Energy Procurement was further complicated by the Lincoln's Birthday state holiday, which was determined to preclude a Monday Rate Stability Procurement. If the IPA were to conduct procurements on Monday or Tuesday, it may be necessary for the ICC to schedule special meetings to approve the bids and contracts. The IPA will continue to keep ExGen's (and other bidders') concerns with respect to this issue in mind and will continue to work with ICC Staff and the Procurement Administrators to select an optimal date on which to hold future procurement events.

With respect to bidder notification, ExGen recommends that while the formal notification process may need to be constructed under a statutory timetable, that informal notification be given to winning bidders the same day as bids are submitted. In fact, the Procurement Administrators took this action, although to the extent that ExGen or other parties have

recommendations to improve this informal notification, the IPA would welcome those recommendations. The IPA concurs that this informal notification, with the caveat that no bids are final until the Commission approves them, serves to help mitigate the risk of keeping positions open until formal approval is received and encourages that the practice continue.

Finally, ExGen recommends that the REC procurement events be held earlier to facilitate the ability of the utilities to calculate their new rates as far in advance of their effective date as possible. Exelon argues that holding procurement events earlier will benefit the operations of the retail marketplace by allowing informed customer supplier choices to be made sooner. The IPA agrees, but is still constrained by the statutorily mandated process. In 2012, the REC procurements were scheduled as quickly as possible after the energy/capacity procurements for this very reason. Complicating the calendar, however, was the fact that two separate and distinct sets of procurement events were mandated for 2012: the February Rate Stability Procurements and the subsequent Spring Procurements. Barring any new legislative mandates, the IPA anticipates only one set of procurements in 2013. Further, it is likely that the Distributed Generation Renewable Resource Procurement will be operationally optimized if it is held as soon after Commission approval of the 2013 Procurement Plan as possible. Thus, while it is impossible to predict the outcome of a future regulatory proceeding regarding a plan that is still not fully formed, it is reasonable to expect a desire on all parties to conduct the renewable resource procurements earlier than in prior years.

IV. Response to NERA Economic Consulting

NERA, the Procurement Administrator for the ComEd procurements, suggests three specific enhancements:

- Rationalize the contract comment process;
- Shift responsibility for the preparation of supply contracts to ComEd; and

- Make the IPA the beneficiary under the pre-bid letter of credit.

The IPA concurs with all three of these recommendations. The first two will serve to reduce the billable hours attributable to NERA personnel, thus reducing the costs to be recovered in the bidder and supplier fees. The last facilitates the Boston Pacific suggestion that the pre-bid letters of credit be made uniform across all procurements.

The IPA supports the suggestion that ComEd accept the responsibility for contract preparation, in part because this is a function that Ameren has already assumed in its procurement process. In summary, for all the reasons articulated by NERA, the IPA recommends adoption of the NERA- suggested enhancements.

V. Response to Staff of the Illinois Commerce Commission

Staff presents an extensive discussion on energy hedging which mirrors, in principle, the similar discussion by Boston Pacific. As pointed out above, this will be a key discussion in the 2013 Procurement Plan. The IPA appreciates Staff's insights and proposals and will explicitly consider them in the 2013 Plan.

Staff also offers suggestions for improving the procedures for approving "Other Alternative Sources of Environmentally Preferable Energy". One of the key goals of the IPA for FY2012 has been improvement in the process for informing ARES as to which resources are eligible to meet the Illinois RPS, a responsibility described in 16-115D of the Public Utilities Act. (*See* 220 ILCS 5/16-115D(a)(4).) The Acting Director of the IPA has been working closely with M-RETS and PJM-GATS so that the generator listings on both of these registries reflect, as best as possible in real time, the generators in each of these systems that qualify for purposes of ARES RPS requirements. In addition, the IPA's web site has been redesigned to be a better resource in this regard. Also, the REC RFPs used in 2012 better articulated the nature of resources that would be acceptable for utility RPS compliance. Staff's suggestions offer further

potential for improvement; the IPA acknowledges these additional recommendations. The IPA is preparing to begin several rulemakings and will take Staff's suggestions under advisement as to whether rulemaking or some other mechanism can accomplish what Staff and the IPA aim to achieve.

Staff also expands on the ACP issue raised by Boston Pacific regarding real time pricing customers. As noted above, the IPA agrees that it should be explicitly discussed in the 2013 Procurement Plan and will do so.

CONCLUSION

The IPA wishes to reiterate that all of the commenting parties have raised useful and important questions and recommendations for process improvement. The IPA also wishes to reiterate that it is open to further discussion and consideration as discussed above. The IPA appreciates the constructive nature of the initial comments and looks forward to further constructive evolution of the procurement process in Illinois and resulting benefits to eligible retail customers.